insufficient is *ex post facto*, though creating no presumption. *Hart* v. *State*, 40 Ala. 32; *Goode* v. *State*, 50 Fla. 45, 39 So. 461. But one changing the competency of witnesses is not. *Hopt* v. *Territory of Utah*, 110 U. S. 574, 4 Sup. Ct. 202; *Wester* v. *State*, 142 Ala. 56, 38 So. 1010; *Mrous* v. *State*, 31 Tex. Cr. R. 597, 21 S. W. 764. The courts apparently give no weight to the difference between changes in admissibility of the evidence and changes in its legal effect. *State* v. *Johnson*, 12 Minn. 476. Nor to the fact that the statute admits, rather than excludes, the evidence. *Cf. O'Bryan* v. *Allen*, 108 Mo. 227, 18 S. W. 892. What is a permissible change of the accused's rights seems a matter of degree. In the principal case, the statute applied only to criminal cases. The retroactive effect of a statute admitting in all cases writings previously inadmissible has been held constitutional. *Thompson* v. *Missouri*, 171 U. S. 380, 18 Sup. Ct. 922. The breadth of such a statute may more conclusively negative any legislative intent of breaking faith to the accused, but the distinction seems fine, and the presumption in favor of the constitutionality of the statute should prevail.

CONSTITUTIONAL LAW — POWERS OF THE JUDICIARY — NO JURISDICTION TO ENFORCE CONSTITUTIONAL GUARANTEE OF REPUBLICAN FORM OF GOVERNMENT. — An amendment to the Constitution of Oregon provided for the initiative and referendum. The defendant corporation was taxed under a statute enacted by a reference to the people. It sought to avoid the tax on the ground that the statute and amendment violated the provision in the Federal Constitution that guarantees to each state a republican form of government. The Supreme Court of Oregon sustained the tax. The defendant appealed to the Supreme Court of the United States. *Held*, that the case be dismissed for want of jurisdiction. *Pacific States Tel. & Tel. Co.* v. *Oregon*, U. S. Sup. Ct., Feb. 19, 1912. See NOTES, p. 644.

CORPORATIONS — STOCKHOLDERS: RIGHTS INCIDENT TO MEMBERSHIP — STATUTORY RIGHT TO INSPECTION OF STOCK BOOK. — A statute provided that the stock book of every stock corporation should be open daily for the inspection of its stockholders, and provided for the recovery of a penalty and damages for refusal to allow inspection. On an application by a stockholder for a writ of *mandamus* to compel allowance of an inspection, the corporation stated facts showing that the relator's purpose in seeking an examination was "sinister and inimical to the defendant." *Held*, that the writ should be denied. *People ex rel. Britton* v. *American Press Association*, 133 N. Y. Supp. 216 (App. Div.).

The following decisions support the principal case. *Wight* v. *Heublein*, 111 Md. 649, 75 Atl. 507; *State ex rel. O'Hara* v. *National Biscuit Co.*, 69 N. J. L. 198, 54 Atl. 241; *Commonwealth* v. *Empire Passenger Ry. Co.*, 134 Pa. St. 237, 19 Atl. 629. But the weight of authority is *contra*. *Mutter* v. *Eastern and Midlands Ry. Co.*, 38 Ch. D. 92; *Cincinnati Volksblatt Co.* v. *Hoffmeister*, 62 Oh. St. 189, 56 N. E. 1033; *Venner* v. *Chicago City Ry. Co.*, 246 Ill. 170, 92 N. E. 643. The legislature could expressly provide that *mandamus* should always be granted. And it is frequently argued that the existing statutes intend to procure an absolute right to inspect the books in order to protect the stockholder from any possibility of baffling litigation. *Johnson* v. *Langdon*, 135 Cal. 624, 67 Pac. 1050; *Kimball* v. *Dern*, 116 Pac. 28 (Utah). But the interests of the corporation and the other stockholders are entitled to some consideration. And in the absence of express legislative command, it is submitted that *mandamus* should not be granted to one who has not clean hands. Such a plaintiff should be remitted to his suit for damages in which no issue of the stockholder's purposes could be raised. However, the current of judicial opinion in New York is against the principal case. *People ex rel. Callanan* v.

Keeseville, etc. R. Co., 106 N. Y. App. Div. 349. See *Henry* v. *Babcock & Wilcox Co.*, 196 N. Y. 302, 305, 89 N. E. 942, 943.

CRIMINAL LAW — DEFENSES — DURESS IN ROBBERY AS DEFENSE TO RESULTING MURDER. — The defendant under duress participated in a robbery which ended in the murder by the defendant's associate of the person robbed. A statute provided that duress should be an excuse for any crime except murder. *Held*, that the defendant may be convicted of murder. *State* v. *Moretti*, 120 Pac. 102 (Wash.).

A person is guilty of murder if killing accidentally results from his own act in the commission of robbery. *People* v. *Milton*, 145 Cal. 169, 78 Pac. 549. *Cf. Regina* v. *Serné*, 16 Cox C. C. 311. See 1 HALE, PLEAS OF THE CROWN, 465. If, however, the defendant has a justification for the robbery, he should not be held for the accidental consequences, because the necessary legal blameworthiness is absent. *Cf. Queen* v. *Bruce*, 2 Cox C. C. 262; *Williams* v. *State*, 81 Ala. 1, 1 So. 179. Thus, if the killing in the principal case resulted from the defendant's own act, and the statute excuses that act, the defendant should not be held. This, it seems, is the reasonable interpretation, since penal statutes are to be construed in favor of the accused. *Commonwealth* v. *Standard Oil Co.*, 101 Pa. St. 119. In the absence of excuse, the defendant would be guilty of murder even though the killing is the act of a confederate. *State* v. *Barrett*, 40 Minn. 77, 41 N. W. 463; *State* v. *King*, 24 Utah 482, 68 Pac. 418. *Cf. Commonwealth* v. *Moore*, 121 Ky. 97, 88 S. W. 1085. And even if the statute provides an excuse for the defendant's act, the defendant might be held for his confederate's act on a doctrine analogous to that of agency. *Cf. People* v. *Knapp*, 26 Mich. 112; *Williams* v. *State*, *supra*. But, it is submitted, the defendant should be considered guilty of murder only as a result of his own act of robbery, and so should not be held.

DEEDS — CONSTRUCTION AND OPERATION IN GENERAL — PAROL EVIDENCE TO VARY RECITAL OF CONSIDERATION. — A deed to an intestate from his mother recited a consideration of $2000. The heirs of the whole blood contested the estate with those of the half blood under a statute providing that an estate which vested in an intestate by gift from an ancestor should descend from him solely to relatives of the blood of that ancestor. *Held*, that parol evidence is admissible to show that the sole consideration for the deed to intestate was love and affection. *Harman* v. *Fisher*, 134 N. W. 246 (Neb.).

The recital of consideration in a deed cannot be contradicted for the purpose of defeating the instrument as a conveyance. *Grout* v. *Townsend*, 2 Den. (N. Y.) 336; *Miller* v. *Edgerton*, 38 Kan. 36. But with this exception courts allow great latitude of inquiry as to what, if any, consideration really passed between the parties. See 2 DEVLIN, DEEDS, 3 ed., § 834. In suit for the purchase price the grantor may show that none, or not all, of the consideration was in fact paid. *Gully* v. *Grubbs*, 1 J. J. Marsh. (Ky.) 387; *Bowen* v. *Bell*, 20 Johns. (N. Y.) 338. But see *Baker* v. *Dewey*, 1 B. & C. 704, 707; *Lampon* v. *Corke*, 5 B. & Ald. 606, 611. Or he may show that payment was to be in something other than money. *M'Crea* v. *Purmort*, 16 Wend. (N. Y.) 460. For most purposes the consideration clause is regarded as a mere acknowledgment, subject to contradiction by parol like any other receipt. See 4 WIGMORE, EVIDENCE, § 2433. It has been held that, though the amount of consideration may be varied by parol, its kind cannot, so as to change the deed from one of purchase to one of gift and alter the descent. *Groves* v. *Groves*, 65 Oh. St. 442, 62 N. E. 1044. *Cf. Yates* v. *Burt*, 143 S. W. 73 (Mo.). But to make such a distinction would enable the grantor to make a gift and yet avoid the applicable statute of descent. The result of the principal case seems preferable. *Rockhill* v. *Spraggs*, 9 Ind. 30; *Meeker* v. *Meeker*, 16 Conn. 383.